

REMARKS

Rejected claims 5, 6, 8 and 10 have been cancelled without prejudice.

Claims 1, 4 and 7 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Horzewski '588 in view of Gibson '789. This rejection is respectfully traversed with respect to these claims as amended herein.

Claim 1 specifically recites “an outer expandable sheath disposed about the inner cannula and including first and second shells disposed to contact tissue and configured as substantially half cylindrical segments adjacently aligned along longitudinal edges thereof to expand in an outward direction against tissue in contact therewith responsive to the tip of the inner cannula slidably passing longitudinally in a proximal direction through the sheath for removal therefrom.”

In addition, the dependent claims, including new dependent claim 14, are further limited by such recitations as “a resilient connector attached between the first and second shells for resiliently urging the longitudinal edges of the shells together,” or “the resilient connector resiliently urges a distal end of the first shell toward a distal end of the second shell to form an inner dimension at the distal end of the outer expandable sheath smaller than the outer dimension of the tip positioned distally of the distal end of the outer expandable sheath,” or “an elongated handle eccentrically attached near a proximal end of the inner cannula.”

These aspects of the claimed invention are not disclosed or even fairly

suggested by the cited references considered either alone or in the combination proposed by the Examiner. Neither Horzewski et al '588 nor Gibson '789 discloses separable cylindrical half shells positioned to contact tissue, and expandable outwardly in response to slidable passage through the shells of a distal tip on an inner cannula, in any manner resembling Applicant's claimed invention. As the Examiner correctly notes, Horzewski et al '588 does not disclose an outer sheath of first and second shells. At best, this reference merely discloses an inner tubular element 100 with overlapping edges supporting a ratcheting mechanism to be expanded by the tip 150. However, such inner tubular element is covered by an elastomeric outer tubular element 101 that shrouds the inner tubular element 100 from contacting tissue at a surgical site.

Similarly, Gibson '789 relies upon a thin soft-rubber sheath *c* for covering and constraining separate segments *e* from contacting tissue at a surgical site. Thus, the combined disclosures of these references fails to establish even a *prima facie* basis, including *all* recited elements, from which a proper determination of obviousness can be formed. It is therefore respectfully submitted that amended claims 1, 4 and 7 are now patentably distinguishable over the cited art, and that new claim 14 which depends from allowable claim 1 is also patentable at least for that reason and for its recited distinction over the cited art.

Favorable reconsideration is solicited.

Respectfully submitted,
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